

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

PACIFIC PLAZA LLC, a Washington Limited  
Liability Company;

Plaintiff,

v.

LANDMARK AMERICAN INSURANCE  
COMPANY, a foreign insurer; IRONSHORE  
SPECIALTY INSURANCE COMPANY, a  
foreign insurer; STEADFAST INSURANCE  
COMPANY, a foreign insurer; FALLS LAKE  
FIRE AND CASUALTY COMPANY, a  
foreign insurer; COMMERCIAL  
INDUSTRIAL BUILDING OWNERS  
ALLIANCE, INC., a foreign corporation; and  
CLAIMS ADJUSTING GROUP, INC. a  
foreign corporation;

Defendants.

No. 22-2-05428-31

**FIRST AMENDED COMPLAINT**

Plaintiff, Pacific Plaza LLC, submits the following Complaint for Declaratory Relief  
against the Defendants.

**I. PARTIES**

1.1 Plaintiff, Pacific Plaza LLC (Pacific Plaza), is a Limited Liability Company  
organized under the laws of the state of Washington.

1           1.2     Defendant Landmark American Insurance Company (Landmark) is a foreign  
2 insurer organized under the laws of the state of Georgia doing business in Washington State.

3           1.3     Defendant Ironshore Specialty Insurance Company (Ironshore) is a foreign insurer  
4 organized under the laws of the state of California doing business in Washington State.

5           1.4     Defendant Steadfast Insurance Company (Steadfast) is a foreign insurer organized  
6 under the laws of the state of Delaware doing business in Washington State.

7           1.5     Defendant Falls Lake Fire and Casualty Company (Falls Lake) is a foreign insurer  
8 organized under the laws of the state of California doing business in Washington State.

9           1.6     Defendant Commercial Industrial Building Owner's Alliance, Inc. (CIBA) is a  
10 foreign corporation organized under the laws the state of California doing business in Washington  
11 State.

12          1.7     Defendant Claims Adjusting Group, Inc. (CAG), is a foreign corporation organized  
13 under the laws of the state of California doing business in Washington State.

## 14                                   **II.     JURISDICTION AND VENUE**

15          2.1     Plaintiff reasserts paragraphs 1.1 through 1.7 and incorporates the same as though  
16 fully set forth herein.

17          2.2     All acts and omissions of the Defendants herein complained of occurred within  
18 Snohomish County, Washington. The subject policy was also issued in Washington State.

19          2.3     This Court has personal jurisdiction over Landmark pursuant to RCW 4.28.185.

20          2.4     This Court has personal jurisdiction over Ironshore pursuant to RCW 4.28.185.

21          2.5     This Court has personal jurisdiction over Steadfast pursuant to RCW 4.28.185.

22          2.6     This Court has personal jurisdiction over Falls Lake pursuant to RCW 4.28.185.

23          2.7     This Court has personal jurisdiction over CIBA pursuant to RCW 4.28.185.  
24

2.8 This Court has personal jurisdiction over CAG pursuant to RCW 4.28.185.

2.9 This Court has jurisdiction over all parties and over the subject matter of this complaint.

2.10 Venue is proper in Snohomish County, Washington, pursuant to RCW 4.12.020.

### III. FACTUAL BACKGROUND

#### A. Subject Property

3.1 Plaintiff reasserts paragraph 1.1 through 2.10 and incorporates the same as though fully set forth herein.

3.2 The building that is the subject of this lawsuit is an L-shaped plaza located at 22315 Highway 99, Edmonds, WA 98026 (the “Subject Property”). The Subject Property leased office spaces to fourteen businesses.

3.3 On September 11, 2021, the Subject Property was completely destroyed by a three-alarm fire.

3.4 Due to the severity of the fire and despite more than seventy firefighters on scene attempting to put out the blaze, all businesses in the Subject Property were significantly damaged by smoke, fire, or water.

3.5 As a result of the fire, the Subject Property and businesses cannot be occupied and are not rentable until repairs are concluded.

3.6 The Subject Property was previously owned by Capstone Commercial Real Estate Advisors, LLC (Capstone).

3.7 On September 15, 2021, Capstone filed a claim with Falls Lake Fire and Casualty Company, Claim No. IP20-030 (the “Capstone Claim”).

3.8 The subject insurers investigated the claim and concluded the loss was covered

1 under the subject policies.

2 3.9 On January 14, 2022, Plaintiff purchased the Subject Property from Capstone  
3 through a Purchase and Sale Agreement. The right to benefits associated with the Capstone Claim  
4 were also transferred to the Plaintiff. The insurers in this case agreed to and approved this  
5 assignment.

6 **B. Insurance Coverage for Subject Property**

7 3.10 Plaintiff reasserts paragraphs 1.1 through 3.9 and incorporates the same as though  
8 fully set forth herein.

9 3.11 The CIBA Insurance Program provides property insurance through a risk pool.

10 3.12 Falls Lake is an insurer within the CIBA Insurance Program. Specifically, Falls  
11 Lake is the primary insurer for the Subject Property.

12 3.13 Landmark, Ironshore, and Steadfast (collectively, the “Underwriters”) are also  
13 insurers within the CIBA Insurance Program. Specifically, the Underwriters are the first-tier  
14 excess insurers for the Subject Property.

15 3.14 Within the CIBA Insurance Program in regard to the Subject Property, CAG is the  
16 assigned claims adjustor on behalf of Falls Lake and the Underwriters.

17 3.15 CIBA is not an insurance company and does not provide or issues policies of  
18 insurance. Insurance coverage provided by the CIBA Insurance Program is provided solely by the  
19 carriers identified in the Schedule of Participating Insurance Companies and not by CIBA.

20 3.16 Pursuant to the Schedule of Participating Insurance Companies, Falls Lake and the  
21 Underwriters are participating insurance companies under the CIBA Insurance Program.

22 3.17 On or before March 31, 2020, Capstone maintained an insurance policy through  
23 CIBA with Falls Lake Fire and Casualty Company, Policy No. CIBA-000001-01, which was in  
24

1 effect from March 31, 2020, to March 31, 2021 (the “Falls Lake Policy”). The Falls Lake Policy  
 2 limit of liability is \$4,000,000.00 regarding the Subject Property.

3 3.18 The Falls Lake Policy provided coverage including, but not limited to, (1) real  
 4 property coverage, (2) business personal property coverage, (3) loss of income coverage, (4)  
 5 emergency vacating expense coverage, (5) arson reward coverage, and (6) business personal  
 6 property while off premises or in transit coverage.

7 3.19 On February 15, 2022, CAG sent Capstone a letter which provided written  
 8 confirmation of the Underwriters’ consent to the assignment of benefits associated with the  
 9 Capstone Claim to the Plaintiff.

10 **C. Defendants’ Claims Handling**

11 3.20 Plaintiff reasserts paragraphs 1.1 through 3.19 and incorporates the same as though  
 12 fully set forth herein.

13 3.21 On September 15, 2021, the Capstone Claim was filed with Falls Lake regarding  
 14 the Subject Property.

15 3.22 Defendants retained J.S. Held to provide an estimate of the building repair costs  
 16 associated with the Subject Property. J.S. Held is not a licensed construction company in  
 17 Washington State.

18 3.23 J.S. Held performed three inspections of the Subject Property and provided three  
 19 separate appraisal estimates.

20 3.24 Plaintiff retained McBride Construction Resources, Inc. (McBride) and BELFOR  
 21 Property Restoration (BELFOR) to provide estimates of the building repair costs associated with  
 22 the Subject property. McBride and BELFOR are both nationally recognized construction firms  
 23 which are licensed contractors in Washington State and regularly perform construction repairs  
 24

1 involving fire losses.

2       3.25    The October 26, 2021, J.S. Held appraisal report of the Subject Property provided  
3 an estimate of \$1,361,351.44.

4       3.26    The January 26, 2022, McBride estimate report of the Subject Property provided  
5 an estimate of \$4,641,147.79.

6       3.27    The February 25, 2022, BELFOR appraisal report of the Subject Property provided  
7 an estimate of \$5,302,234.84.

8       3.28    Thereafter, on March 2, 2022, J.S. Held issued a revised estimate report of the  
9 Subject Property in the amount of \$1,877,218.22.

10       3.29    Finally, on May 18, 2022, J.S. Held issued a second supplemental estimate of the  
11 Subject Property in the amount of \$2,785,142.80.

12       3.30    The difference between the J.S. Held May 2022 estimate and the BELFOR estimate  
13 is \$2,517,092.04. The difference between the J.S. Held May 2022 estimate and the McBride  
14 estimate is \$1,856,009.99.

15       3.31    Due to the Defendants' delay in bringing the \$2,517,092.04 gap between the J.S.  
16 Held May 2022 estimate and BELFOR estimate significantly closer together, Plaintiff has been  
17 unable to begin repairs on the Subject Property.

18       3.32    Without being able to begin repairs and given the existing damage to the Subject  
19 Property, Plaintiff remains unable to lease office spaces in the Subject Property to tenants. As a  
20 result, Plaintiff is unable to generate income and consequential damages continue to increase.

21       3.33    On April 29, 2022, pursuant to RCW 48.30.015, Plaintiff placed Falls Lake on  
22 notice that they are being provided 20 days to cure its unreasonable denial and resolve all  
23 remaining issues under the Capstone Claim. Plaintiff further advised CAG that if the remaining  
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1 issues under the Capstone Claim are not resolved within the 20 days, Plaintiff will proceed with  
 2 having the final damage determination value be set through an appraisal process, pursuant to the  
 3 terms and conditions of the Falls Lake Policy.

4 3.34 On August 3, 2022, Plaintiff sent CAG a demand letter attempting to clarify the  
 5 issues regarding (1) differences in appraisal estimates, (2) business income claim, (3) outstanding  
 6 invoices from Reid Consolidated Services (RCS), (4) dry rot issues, and (5) bad faith damages.  
 7 Plaintiff offered to resolve all claims in the amount of \$3,091,783.91.

8 3.35 On August 18, 2022, Plaintiff sent CAG a second demand letter attempting to settle  
 9 all remaining issues. Plaintiff offered to resolve all extracontractual claims for (1) payment of the  
 10 remaining policy limits under the Falls Lake Policy, (2) payment of an additional twelve months  
 11 of business interruption coverage in the amount of \$456,000, and (3) payment of Plaintiff's  
 12 attorneys fees.

13 3.36 To date, CAG has paid only \$3,061,885.35 in property damage and rental income.  
 14 This amount does not include the cost of repairs estimated by Plaintiff's contractors.

15 3.37 To date, Defendants have made no attempt or offer to engage in meaningful  
 16 settlement negotiations to resolve outstanding claims associated with payment of benefits under  
 17 the Falls Lake Policy.

#### 18 IV. CAUSES OF ACTION

##### 19 A. Breach of Contract

20 4.1 Plaintiff reasserts paragraph 1.1 through 3.37 and incorporates the same as though  
 21 fully set forth herein.

22 4.2 Defendants had a contractual duty to their insureds under the Falls Lake Policy.

23 4.3 Defendants also had a duty to the Plaintiff to act reasonably and in good faith in the  
 24

1 investigation and adjustment of claims, pursuant to the terms of the insurance contracts between  
2 the parties and the implied covenant of good faith and fair dealing.

3 4.4 Defendants breached the Falls Lake Policy and the implied duty of good faith and  
4 fair dealing by failing to pay benefits which the Plaintiff is entitled to receive. Pursuant to the Falls  
5 Lake Policy, the Plaintiff is entitled to receive payment for the remaining policy limits.

6 4.5 Defendants also breached the contract of insurance by selecting J.S. Held, an  
7 unlicensed construction company, to provide appraisal estimates as to the repair costs associated  
8 with the Subject Property.

9 4.6 As a direct and proximate cause of the breaches of contract set forth above, the  
10 Plaintiff has sustained consequential damages due to the delays in payments associated with this  
11 claim.

12 4.7 As a result of Defendants' breach of the Falls Lake Policy, Plaintiff is entitled to  
13 damages for the remaining policy limits.

14 **B. Violation of the Consumer Protection Act (CPA)**

15 4.8 Plaintiff reasserts paragraphs 1.1 to 4.7 and incorporates the same as though fully  
16 set forth herein.

17 4.9 Defendants' unreasonable and repeated delays in revising the structure costs  
18 resulted in the Plaintiff not receiving the payments for benefits which Plaintiff is entitled to receive.

19 4.10 Defendants received the McBride estimate in January 2022 and the BELFOR  
20 estimate in February 2022. Despite having two credible appraisal estimates from reputable  
21 Washington contractors, Defendants' expert, J.S. Held, inspected the Subject Property again in  
22 March and May of 2022. Even with J.S. Held's increased May 2022 estimate, a \$2.5 million gap  
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1 remained when compared to the BELFOR estimates which ultimately resulted in further delay to  
2 Plaintiff being able to perform repairs.

3 4.11 As a result of Defendants' delays, Plaintiff was unable to repair the Subject  
4 Property and has suffered a loss of income. Plaintiff remains unable to rent offices in the Subject  
5 Property to tenants which directly affects Plaintiff's ability to generate income and is the reason  
6 consequential damages continue to increase.

7 4.12 Defendants' conduct is unreasonable and constitutes unfair acts and deceptive  
8 practices under RCW 19.86 et al.

9 4.13 Defendants' acts and omissions constitute multiple violations of insurance  
10 regulatory provisions of the Washington Administrative Code (WAC), including, but not limited  
11 to:

12 a. refusing to act in good faith to effectuate prompt, fair and equitable settlement of  
13 claims in which liability has become reasonably clear in violation of WAC 284-30-  
14 330(6); and

15 b. compelling Plaintiff, a first party claimant, to initiate this litigation to recover  
16 amounts due under an insurance policy by offering substantially less than the  
17 amounts ultimately recovered in such actions or proceedings in violation of WAC  
18 284-30-330(7).

19 4.14 Defendants failed to engage in meaningful settlement negotiations with Plaintiff  
20 despite Plaintiff providing two reasonable settlement offers on August 3, 2022, and August 18,  
21 2022.

22 4.15 Defendants fail to consider the economic impact the delays in the payment of  
23 benefits under the Falls Lake Policy have on the overall costs associated with repairs. Specifically,  
24

1 inflation rates and construction costs have gone up significantly in the last seven months.

2 4.16 As a result of the Defendants' violation of the CPA, Plaintiff is entitled to receive  
3 (1) payment for twelve additional months of business interruption coverage, (2) unpaid invoices  
4 from RCS, (3) punitive damages, and (4) attorney fees.

5 **C. Bad Faith**

6 4.17 Plaintiff reasserts paragraph 1.1 to 4.16 and incorporates the same as though fully  
7 set forth herein.

8 4.18 Defendants had a duty to act in good faith regarding the investigation and  
9 adjustment of claims.

10 4.19 Defendants failed to act in good faith and deal fairly with Plaintiff by repeatedly  
11 delaying the adjustment of the claims associated with the Subject Property.

12 4.20 At this time, more than eleven months have elapsed since the September 11, 2021  
13 subject loss. Defendants have still not paid the full amount of repair costs to the Plaintiff making  
14 it impossible for the Plaintiff to conclude repairs within twelve months from the date of loss as  
15 required by the Policy.

16 4.21 As a direct result of the Defendants' unreasonable delays in the adjustment of  
17 claims and failing to pay the benefits Plaintiff is entitled to, Defendants acted in bad faith.

18 4.22 Plaintiff is entitled to consequential damages for the Defendants' acts of bad faith.

19 **D. Violation of Insurance Fair Conduct Act (IFCA)**

20 4.23 The Plaintiff reasserts paragraphs 1.1 to 4.22 and incorporate the same as though  
21 fully set forth herein.

22 4.24 Pursuant to RCW 48.30.015, any first party claimant to a policy of insurance who  
23 is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an  
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1 action in the superior court of this state to recover the actual damages sustained, together with the  
2 costs of the action, including reasonable attorneys' fees and litigation costs.

3 4.25 IFCA explicitly creates a cause of action for first party insureds who were  
4 "unreasonably denied a claim for coverage or payment of benefits." IFCA was not meant to create  
5 a cause of action for regulatory violations. *See Perez-Crisantos v. State Farm*, 187 Wn.2d 669  
6 (2017).

7 4.26 Defendants unreasonably denied the Plaintiff's claim for payment of benefits under  
8 the Policy. Specifically, the Defendants failed to pay the remainder of the Policy limits in which  
9 the Plaintiff is entitled to receive and continued to delay a resolution of this claim. The BELFOR  
10 estimate from February 2022 is approximately \$1,300,000 over the policy limit and the McBride  
11 estimate from January 2022 is approximately \$600,000 over the policy limit. Regardless of  
12 whether the McBride or BELFOR appraisal estimates are used, McBride and BELFOR are the  
13 only licensed contractors who provided legitimate estimates and the Plaintiff is entitled to the  
14 remaining policy limits.

15 4.27 Defendants have failed to reimburse the Plaintiff for the actual amounts provided  
16 in either the McBride or BELFOR estimates.

17 4.28 Plaintiff provided Defendants with notice regarding a potential IFCA claim on  
18 April 29, 2022. Defendants failed to resolve all issues regarding the payment of benefits under the  
19 Policy within the twenty (20) day period pursuant to RCW 48.30.015(8).

20 4.29 As a result of the Defendants' violation of the IFCA, the Plaintiff is entitled to  
21 receive (1) actual damages in the amount of the remaining policy limits and (2) reasonable  
22 attorneys' fees and litigation costs incurred in prosecuting this action against the Defendants.  
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**V. PRAYER FOR RELIEF**

Plaintiff, having alleged the foregoing, does now hereby pray for relief as follows:

1. For trebling of actual damages caused by Defendants and attorney fees pursuant to IFCA.
2. For trebling of actual damages caused by Defendants and attorney fees pursuant to the CPA.
3. For all interest allowed by law.
4. For attorney fees and costs allowed by statute and law.
5. For other and further relief as the Court deems just and equitable.

DATED this 3rd day of October 2022.

LEATHER LAW GROUP

/s/ Thomas Lether

/s/ Ryan Bisel

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**CERTIFICATE OF SERVICE**

The undersigned hereby certify under the penalty of perjury under the laws of the United States of America that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the following parties:

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**By: [X] ECF**

Dated this 3<sup>rd</sup> day of October 2022 at Seattle, Washington.

/s/ Devon Sheehan  
Devon Sheehan | Paralegal